IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-MH 2007-0003
)	DEPARTMENT B
IN RE PIMA COUNTY MENTAL HEALTH NO. MH-20050999)	
)	MEMORANDUM DECISION
)	Not for Publication
)	Rule 28, Rules of
)	Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Honorable Sharon Douglas, Court Commissioner

AFFIRMED

Barbara LaWall, Pima County Attorney
By Ruthanne Miller — Tucson
Attorneys for Appellee

Davida Arambula — Tucson
Attorney for Appellant

V Á S Q U E Z, Judge.

¶1 After a hearing, the trial court found by clear and convincing evidence that appellant is persistently or acutely disabled as the result of a mental disorder, is in need of treatment, and is either unable or unwilling to accept or continue treatment voluntarily. Thus effectively finding the requirements of A.R.S. § 36-540(A) met, the court ordered that appellant receive mental health treatment for one year, including no more than 180 days of inpatient treatment "in a level one facility."

¶2 Appellant contends the state failed to prove by clear and convincing evidence that he is persistently or acutely disabled as that term is defined in A.R.S. § 36-501(33).[1] His specific complaint is that neither of the two physician witnesses who had examined him, *see* A.R.S. § 36-539(B), had explained to him the advantages and disadvantages of accepting treatment as well as the available alternatives to the proposed treatment. *See* § 36-501(33)(b). Nor, he claims, did they alternatively state specific reasons why he was incapable of understanding their explanations, giving informed consent, or making decisions regarding his own treatment.

¶3 "Because involuntary treatment proceedings may result in a serious deprivation of appellant's liberty interests," *In re Maricopa County Mental Health No. MH*

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[1]To prove that a person is persistently or acutely disabled within the meaning of § 36-501(33) requires proof of "a severe mental disorder" that meets all of the following criteria:

> (a) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.
>
> (b) Substantially impairs the person's capacity to make an informed decision regarding treatment and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.
>
> (c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

2001-001139, 203 Ariz. 351, ¶ 8, 54 P.3d 380, 382 (App. 2002), the applicable statutes must be carefully followed. *In re Maricopa County Mental Health No. MH 2003-000058*, 207 Ariz. 224, ¶ 12, 84 P.3d 489, 492 (App. 2004); *In re Pima County Mental Health No. MH-1140-6-93*, 176 Ariz. 565, 567, 863 P.2d 284, 286 (App. 1993). "Proceedings to adjudicate a person mentally incompetent must be conducted in strict compliance with the statutory requirements. Failure to do so renders the proceedings void." *In re Maxwell*, 146 Ariz. 27, 30, 703 P.2d 574, 577 (1985). We will affirm a commitment order if it is supported by substantial evidence, *id*. at 29, 703 P.2d at 576; *Pima County No. MH-1140-6-93*, 176 Ariz. at 566, 863 P.2d at 285, and will not set aside the trial court's findings unless they are clearly erroneous. *Id*.

¶4 At the time of the 2007 commitment hearing, appellant was thirty-five years old. He had previously been involuntarily committed for mental health treatment at least once, in December 2005. His diagnosis was "a paranoid delusional syndrome, possibly paranoid schizophrenia. He also has a history of abusing cocaine and amphetamines." Appellant was obviously delusional and paranoid when admitted for evaluation in March 2007 and, since his admission, had consistently refused medication.

¶5 Psychiatrists Evelyn McCullars and Mark Helms each evaluated appellant and testified at the commitment hearing that he has a severe but treatable mental illness. Both physicians testified that appellant's disordered thinking was "significantly impair[ing] his judgment, reason, behavior and capacity to recognize reality." As a result, they stated,

appellant had neither insight into his condition nor the ability to make sound, informed decisions. Dr. McCullars testified she did not think appellant "would be successful" as a voluntary patient, and Dr. Helms elaborated that appellant's paranoia and distrust meant "he would not have been a candidate for voluntary hospitalization."

¶6 Appellant is correct that neither physician reported having specifically discussed treatment alternatives, advantages, and disadvantages with him. When asked if she had talked to appellant about treatment options, Dr. McCullars testified: "I got as far as the medication, and he basically said, 'I ain't taking no medication,' quote, unquote. . . . Most of the response is, 'That's it. We are done.' If I am asking about starting treatment, asking my questions, rather than letting him ramble, he gets up and leaves." And McCullars's testimony that appellant remained paranoid and delusional at the time of the hearing was amply illustrated both by appellant's behavior in court, interrupting and commenting on other witnesses' testimony despite the court's admonition not to do so, and by his testimony, which demonstrated his belief that he had been "wrongfully" diagnosed and did not actually have a psychiatric disorder or need treatment.

¶7 As legal authority for his position, appellant cites a single case, *In re an Alleged Mentally Disordered Person, MH 91-00558*, 175 Ariz. 221, 854 P.2d 1207 (App. 1993), in which Division One of this court held the evidence presented failed to satisfy the statutory definition of § 36-501(33)(b) for the same reasons appellant alleges here. The court deemed insufficient an examining physician's opinion "that the patient is incapable of

understanding the explanations required by the statute." *Id.* at 226, 854 P.2d at 1212. Instead, the court held, "the physicians [must] also relate the specific reasons why the patient is incapable of understanding and expressing an understanding of such explanations." *Id.*

¶8 The state counters that the present facts more closely resemble those in *In re Pima County Mental Health No. MH-1140-6-93*, 176 Ariz. 565, 863 P.2d 284 (App. 1993). There, the treating physician testified that the patient's behavior of walking away every time the doctor approached and tried to converse with him had prevented literal compliance with the requirements of the statute. We held that, in such a circumstance, the need for strict compliance with the statute did not extend to the point of "absurdity or impossibility." *Id.* at 568, 863 P.2d at 287.

> [W]e do not believe that mental health officials must engage in a confrontation with a mentally ill patient or have the patient physically restrained in order to fulfill the letter of the requirement. This is particularly true where, as here, the record reflects a long history of mental illness, and the testimony of four witnesses establishes current behavior supporting the diagnosis of an acute and persistent disorder.

Id.

¶9 Subsequently, in *In re Maricopa County Mental Health No. MH 94-00592*, 182 Ariz. 440, 897 P.2d 742 (App. 1995), Division One discussed our holding in *Pima County No. MH-1140-6-93*, stating the statutory requirement that treatment alternatives be explained to patients "can be excused only if the proof is clear and convincing that it was

impracticable to do so. The patient's actions which might render further explanation by the physician unnecessary include excessive verbal abuse, physical abuse, repeatedly walking away when the physicians attempt to discuss the matters, or nonresponsiveness." *Maricopa County No. MH 94-00592*, 182 Ariz. at 446, 897 P.2d at 748.

¶10 Without question, the better practice here would have been for the examining physicians to have explained specifically how appellant's delusional state rendered him unable to understand any explanation of the advantages, disadvantages, and alternatives to treatment. But the record nonetheless contains substantial evidence showing clearly that appellant's illness deprived him of insight into his condition and left him unable to give informed consent or make rational decisions regarding his own treatment. Under such circumstances, when the nature and severity of appellant's illness made any meaningful discussion of treatment alternatives plainly impossible, to require the semblance of such a discussion as a mere formality would be altogether pointless.

¶11 Based on the testimony of four witnesses, on appellant's testimony and behavior at the hearing, and on the record as a whole, we are satisfied that substantial evidence convincingly supports the trial court's conclusion that appellant is persistently and acutely disabled. We therefore affirm its order of commitment entered on March 27, 2007.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge